



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTI/173629

PRELIMINARY RECITALS

Pursuant to a petition filed April 12, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care (CC), a hearing was held on May 04, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of a January 2014 tax intercept notice is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On January 17, 2014 the agency sent the petitioner a tax intercept notice. That notice was sent to the petitioner at her [REDACTED] address. This was the correct address at the time of the notice. The petitioner received this notice.
3. The petitioner testified that she moved to an [REDACTED] address in November or December 2014. This is well after the agency had sent the petitioner all of the notices on this case.
4. Prior to sending the tax intercept notice the agency sent an overpayment notice on August 21, 2013, a repayment agreement on September 4, 2013, and dunning notices reminding her of the debt on October 2, 2013, November 4, 2013, and December 3, 2013. All of these notices were sent to the petitioner's [REDACTED] address before she moved.
5. On April 12, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The overpayment rules require the agency to recover overpayments, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1. A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2. In this case, the date of the notice was January 17, 2014, and the Division of Hearings and Appeals did not receive the petitioner's request for fair hearing until April 12, 2016. This is well outside of the 30 day window, and the petitioner's appeal of the tax intercept is untimely. The petitioner argued that she had moved, however, she did not move until after the November or December 2014, which is well past the January 2014 notice. Thus, she would have received the tax intercept notice. Because her appeal is untimely, I am without jurisdiction to decide whether the agency correctly implemented the tax intercept.

I note that even if I had jurisdiction to decide this issue, I would decide that the agency correctly implemented a tax intercept. The agency sent Petitioner a Notice of Overpayment, a Repayment agreement, three dunning notices, and finally a notice the agency was going to intercept her taxes. These notices were all sent to the correct address.

At the hearing the petitioner attempted to argue that the underlying overpayment was her daycare providers fault. She said that she was working for the daycare, and she only brought her children there when she was working. The original overpayment notice was sent to the petitioner in 2013. That would have been the time to contest this overpayment. At this point the petitioner is well beyond the time limit in which to appeal the overpayment.

CONCLUSIONS OF LAW

The petitioner's appeal of a January 2014 tax intercept notice is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of June, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 7, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit